

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
U S West Petition for Forbearance)
Regarding the Provision of)
National Directory Assistance)

CC Docket No. 97-172

COMMENTS OF SBC COMMUNICATIONS INC.

SBC Communications Inc., on behalf of itself and its subsidiaries (collectively referred to as "SBC"), hereby files these Comments in response to the Commission's Public Notice in this proceeding, released March 19, 1998. These Comments support the U S West Petition for Forbearance to provide National Directory Assistance ("NDA") through its BOC subsidiary as an adjunct to basic service.¹ Neither the accessing of a database outside a customer's LATA or providing that customer a telephone number which he can use if he chooses to make a call outside of his LATA renders NDA an interLATA service. Yet, even if the Commission were to find that the provision of NDA is an incidental interLATA service under Section 271 (g) (4) of the Telecommunications

¹ By letter dated March 20, 1998, Chris Jines, Director-Federal Regulatory of SBC Communications, Inc., submitted an ex parte communication to Michelle Carey of the Common Carrier Bureau regarding U S West's Petition for a Declaratory Ruling Regarding the Provision of National Directory Assistance. These comments reference and hereby incorporate this correspondence.

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Act., forbearance from imposing separate subsidiary requirements is warranted under Section 10.

I. CONSISTENT WITH PRIOR COMMISSION PRECEDENT, THE COMMISSION SHOULD RECOGNIZE NDA AS AN ADJUNCT-TO-BASIC SERVICE AND NOT AN INTERLATA SERVICE.

Directory assistance has traditionally been found to be an adjunct-to-basic service.

As the Commission noted in its Memorandum Opinion and Order in the NATA/Centrex proceeding²:

The significance of purpose of identifying a "basic" adjunct to basic service is perhaps most clear in the case of directory assistance. When a customer uses directory assistance, that customer access information stored in a telephone company data base. . . An offering of access to a data base for the purpose of obtaining telephone numbers may be offered as an adjunct to basic telephone service. . .³

This classification of directory assistance as an adjunct to basic service has been confirmed subsequently by the Commission without deviation.⁴ The only difference between the traditional directory assistance service that has been offered by the local

² In the Matter of North American Telecommunications Association: Petition for Declaratory Ruling Under Section 64.702 of the Commission's Rules Regarding the Integration of Centrex, Enhanced Services and Customer Premises Equipment, Memorandum Opinion and Order, 101 FCC 2d 349 (1985).

³ Id. at Paragraph 26.

⁴See, e.g. In the Matter of Implementation of the Telecommunications Act of 1996; Telecommunications Carriers Use of Customer Proprietary Network Information and Other Customer Information, CC Docket No. 96-115, and In the Matter of Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, as Amended, CC Docket No. 96-149, Second Report and Order and Further Notice of Proposed Rulemaking (Released February 26, 1998), Paragraph 73.

exchange carriers and NDA service is that a long distance, as opposed to a local, number is being provided to the customer; the nature of the service remains the same.⁵

An example may help to illustrate the point. Today, a customer in Pine Bluff Arkansas dials "411" for local directory assistance and reaches an operator that may be physically located in Hot Springs, Arkansas. The operator accesses the directory assistance database which is physically located in Oklahoma City, Oklahoma to retrieve the requested listing. The caller is eligible to receive any listing in their home NPA 870 which overlaps LATAs 520 and 538. In this example, the caller, the operator, and the directory assistance database are all located in different LATAs. The introduction of NDA would simply involve the addition of one or more databases to expand the listing information available to the operator and the caller. In any event, the nature of the service remains the same. The end-user has not specified a transmission between points in different LATAs. The call subsequently placed by the end-user to the listing provided by the operator does, of course, constitute an interLATA service.

The issue of whether the provision of a foreign listing is an adjunct-to-basic service was considered in a similar context by the Common Carrier Bureau with regard to Southwestern Bell's DirectLine Custom service.⁶ This service offered customers the ability to access local and foreign listings by entering a subscriber's name from a remote

⁵ SBC agrees with U S West's position that to regulate this service based upon the contents of the information provided to the customer raises significant First Amendment concerns. U S West Petition, pp. 30-33.

⁶ In the Matter of Southwestern Bell Telephone Company, Petition for Waiver of Section 69.4(b) of the Commission's Rules, Revisions to Tariff FCC No. 68, Memorandum Opinion and Order, 5 FCC Rcd. 3792 (1990).

computer. It was found by the Common Carrier Bureau to be an adjunct-to-basic service.

Passage of the Telecommunications Act did not alter this precedent or convert the offering of long distance directory assistance to an interLATA service. As discussed in detail by U S West⁷ traditional local directory assistance, like NDA, utilizes interLATA facilities to provide a service to customers on a local level. However, the facilities used are not determinative of whether the offering is interLATA in nature. An "interLATA service" within the scope of Section 271 (a) of the Act is "telecommunications between a point located in a local access and transport area and a point located outside such area."⁸ with "telecommunications " being defined as " the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information sent and received."⁹ As U S West points out, the provision of long distance directory assistance does not entail the end user specifying a transmission between points located in different LATAs. The end user does not have any interest as to the location of the database providing the information. His interest is simply that information is being provided which will allow him to make an interLATA call. The routing of the end user's call to a destination outside of the LATA as identified by the end user constitutes an interLATA service, not the provision of the number whereby the

⁷ U S West Petition, pp. 9-13.

⁸ 47 U.S.C. 153 (21).

⁹ 47 U.S.C. 153 (43).

end user can make this call if he so chooses.

II. EVEN IF NDA COULD BE CHARACTERIZED AS AN INTERLATA SERVICE, IT WOULD ONLY BE AN INCIDENTAL OFFERING UNDER SECTION 271 OF THE TELECOMMUNICATIONS ACT.

Section 271(g) of the Telecommunications Act defines "incidental interLATA services". While certain of these services are subject to separate affiliate requirements, others are not. NDA as provided by U S West could be interpreted as falling within the parameters of Section 271 (g)(5).¹⁰ This provision defines as an "incidental interLATA service" the provisioning of "... signaling information used in connection with the provision of telephone exchange services or exchange access by a local exchange carrier".

As noted by the Commission in the Non-Accounting Safeguards Order,¹¹ under the MFJ, the BOCs were permitted to use their interLATA official networks to perform directory assistance associated with the provision of exchange and exchange access services on a centralized basis. Section 271(g)(5) continues this precedent.

In many ways, the signaling used for a NDA database query is analogous to a Line Information Data Base (LIDB) query used to validate a local or intraLATA LEC calling card call. The caller typically dials the digit "0" plus the number they are calling. The call is routed to a operator services switch for automated or operator-assisted call processing. The switch launches a query over the SS7 network to the appropriate LIDB

¹⁰ 47 U.S.C. 271 (g) (5)

¹¹ In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934 as amended, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905 (1996), Paragraph 122, Footnote 280.

database for validation. Like a directory assistance database query, the LIDB database returns the requested information to the operator services switch for further processing. Essentially, these are identical functions; both involve an operator services switch which launches a query to retrieve information from a database. The databases may be located in different LATAs from the caller and/or from the switch which launches a query to retrieve information from a database. The network signaling components of LIDB queries include SS7 links and Signal Transfer Points (STP); the directory assistance components include dedicated T1 circuits and network routers which perform the same function as an STP in directing a query to the proper database. In either case, the caller has not specified the points of transmission, nor does the end-user have any interest as to the location of the database providing the information.

Clearly, the accessing of interLATA facilities, through NDA is that nature of signaling envisioned by Section 271(g)(5). As such, a structurally separate affiliate is not required for the provisioning of NDA as an incidental interLATA service.¹²

U S West in its Petition notes that an argument might be made that NDA constitutes an incidental interLATA service under Section 271(g)(4).¹³ This provision defines categorizes as an incidental interLATA service a service which ". . . permits a customer that is located in one LATA to retrieve stored information from, or file information for storage in, information storage facilities of such company that are located in another LATA." As previously discussed, NDA may involve the accessing of a

¹² 47 U.S.C. 272 (a) (2) (B) (i).

¹³ 47 U.S.C. 271 (g) (4).

database outside the caller's LATA, as is currently being done today in certain local directory assistance situations. In SBC's opinion, such de minimus contact does not convert the service being provided to the customer into an interLATA service. However, if the Commission were to find to the contrary, then Section 271 (g) (4) could apply. In this case, forbearance from imposition of the structural separations requirements would be justified for the reasons stated below.

III. EVEN IF THE SEPARATE AFFILIATE REQUIREMENTS WERE FOUND BY THE COMMISSION TO APPLY, FORBEARANCE FROM THE IMPOSITION OF THESE REQUIREMENTS ARE WARRANTED.

Section 10 of the Telecommunications Act ¹⁴allows the Commission to refrain from imposing structural separations requirements if it determines the following factors are present:

- (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;
- (2) enforcement of such regulation or provision is not necessary for the protection of consumers ; and
- (3) forbearance from applying such provision or regulation is consistent with the public interest.

U S West has demonstrated that all of these conditions are met by its NDA offering. U S West's participation would facilitate a competitive market and serve to broaden consumers' choices not limit them. Because the provision of this service by U S West's BOC entity enables it to capitalize on inherent economies, customers are able to

¹⁴ 47 U.S.C. 160.

receive the service at a competitive price. There is no evidence that the service as current structured results in unjust or unreasonably discriminatory charges.

Nor is structural separation necessary for the protection of consumers. Indeed, U S West 's experience has been that consumers have welcomed its provision of NDA. Yet, the provisioning of this service and the benefits currently received by U S West's customers would be put at risk if the Commission imposes these restrictions. Separate affiliate requirements would necessitate the duplication of directory assistance personnel as well as facilities and equipment. Even if U S West were willing to make these substantial expenditures in order to offer NDA, its resumption of the service would be delayed and its charges for the service must correspondingly increase. How the consumer would be "protected" by requirements which would either deny him a service he has welcomed or result in him paying more for that service is difficult to envision.

There is also no question that U S West's offering of this service through its current structure is in the public's interest. The current proliferation of new area codes has resulted in predictable customer confusion. To expect a customer to be acquainted with the area code of the number he is trying to obtain is unreasonable and unrealistic. Competition for the betterment of the consumer can best be served by allowing U S West and other BOCs to enter this already competitive market on a level playing field.¹⁵

¹⁵ See Attachments A and B of the U S West Petition relating to AT&T's offering of its new "Double-0 Info" directory assistance service. This service evidences the focus now being placed by IXC's on their directory assistance offerings as a result of BOC entry.

The Commission's forbearance in this matter would be consistent with the approach it took in with regard to BellSouth's reverse directory service.¹⁶ Forbearance was granted to BellSouth because the Commission found that consumers would benefit from the provisioning of the service on an integrated basis, that the market for the service would be likely to become increasingly competitive and that forbearance would foster this competition. These conditions also apply with regard to NDA.

CONCLUSION

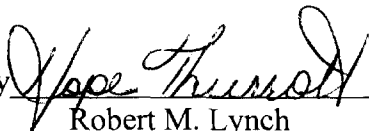
SBC strongly supports U.S. West's position that NDA, like local directory assistance, is an adjunct to basic service and does not constitute an interLATA service. The fact that a database outside the customer's LATA is being accessed to enable the customer to place an interLATA call through an IXC does not alter the nature of the NDA offering. However, if the Commission were to find that NDA is interLATA nature, it is clearly an incidental interLATA service under either Section 271 (g) (5) or (g) (4) of the Telecommunications Act. If NDA is an incidental interLATA service under

¹⁶ Bell Operating Companies, Petitions for Forbearance from the Application of Section 272 of the Communications Act of 1934 as Amended to Certain Activities, CC Docket No. 96-149, Memorandum Opinion and Order, DA 98-220 (released February 6, 1998).

Section 271(g)(4), forbearance from the imposition of separate affiliate requirements is warranted in accordance with Section 10.

Respectfully submitted,

SBC COMMUNICATIONS INC.
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OF ITS SUBSIDIARIES

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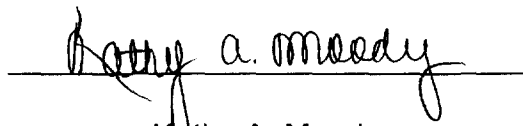
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April 9, 1998

CERTIFICATE OF SERVICE

I, Kathy A. Moody, hereby certify that "Comments of SBC Communications, Inc." in CC Docket No. 97-172 have been served on April 9, 1998, to the Parties of Record.


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